

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

M.T., a minor by and through his grandmother and next friend, EDWINA WOODLEY, et al.,

Plaintiffs,

VS.

TATUM UNIFIED SCHOOL DISTRICT,

Defendant.

[illegible]

C.A. NO.: 2:21-cv-00364

AMENDED JOINT PROPOSED JURY INSTRUCTIONS
AND VERDICT FORMS

Plaintiffs M.T., a minor by and through his grandmother and next friend Edwina Woodley, and K.C., a minor by and through his mother and next friend Kambry Cox, and Defendant Tatum Independent School District (TISD or the District) file their Joint Proposed Jury Instructions and Verdict Form as follows:

For the Court’s reference, the contested additions that the Plaintiffs argue should be included are referred to as “Plaintiffs’ Proposed” in the heading and the contested additions that the District argues should be included are referred to as “District’s Proposed” in the heading. Dependent on the Court’s rulings on these issues, the numbered instructions and questions may change.

Plaintiffs object to the District's refusal to refer to itself as Defendant in the pretrial filings on the grounds that doing so will cause confusion and prejudice to the

remaining parties in the instant action as several plaintiffs and defendants have been dismissed from the case.

Instruction No. 1:

Preliminary Instructions

Members of the jury panel, if you have a cell phone, PDA, smart phone, iPhone, or any other wireless communication device with you, please take it out now and turn it off. Do not turn it to vibrate or silent; power it down. During jury selection, you must leave it off.

There are certain rules you must follow while participating in this trial.

First, you may not communicate with anyone about the case, including your fellow jurors, until it is time to deliberate. I understand you may want to tell your family, close friends, and other people that you have been called for jury service so that you can explain when you are required to be in court. You should warn them not to ask you about this case, tell you anything they know or think they know about it, or discuss this case in your presence, until after I accept your verdict or excuse you as a juror.

Similarly, you must not give any information to anyone by any means about this case. For example, do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, camera, recording device, PDA, computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, YouTube, Snapchat, Instagram, or Twitter/X, or any other way to communicate to anyone any information about this case until I accept your verdict or until you have been excused as a juror. This includes any information about the parties, witnesses, participants, claims, evidence, or anything else related to this case.

Second, do not speak with anyone in or around the courthouse other than your fellow jurors or court personnel. Some of the people you encounter may have some connection to the case. If you were to speak with them, that could create an appearance or raise a suspicion of impropriety.

Third, do not do any research—on the Internet, in libraries, in books, newspapers, magazines, or using any other source or method. Do not make any investigation about this case on your own. Do not visit or view any place discussed in this case and do not use Internet programs or other devices to search for or view

any place discussed in the testimony. Do not in any way research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge, until after you have been excused as jurors. If you happen to see or hear anything touching on this case in the media, turn away and report it to me as soon as possible.

These rules protect the parties' right to have this case decided only on evidence they know about, that has been presented here in court. If you do any research, investigation, or experiment that we do not know about, or gain any information through improper communications, then your verdict may be influenced by inaccurate, incomplete, or misleading information that has not been tested by the trial process, which includes the oath to tell the truth and cross-examination. It could also be unfair to the parties' right to know what information the jurors are relying on to decide the case. Each of the parties is entitled to a fair trial by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide the case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this country and you will have done an injustice. It is very important that you abide by these rules. Failure to follow these instructions could result in the case having to be retried.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Source: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, No. 1.1 (2020), available at <http://www.lb5.uscourts.gov/juryinstructions/>]

Instruction No. 2:

Preliminary Instructions

You have now been sworn as the jury to try this case. As the Judge, I will decide all questions of law and procedure. As the jury, you are the judges of the facts. At the end of the trial, I will instruct you on the rules of law that you must apply to the facts as you find them.

You may take notes during the trial. Do not allow your note-taking to distract you from listening to the testimony. Your notes are an aid to your memory. If your memory should later be different from your notes, you should rely on your memory. Do not be unduly influenced by the notes of other jurors. A juror's notes are not entitled to any greater weight than each juror's recollection of the testimony.

Until this trial is over, do not discuss this case with anyone and do not permit anyone to discuss this case in your presence. This includes your spouse, children, relatives, friends, coworkers, and people with whom you commute to court each day. During your jury service, you must not communicate any information about this case by any means, by conversation or with the tools of technology. For example, do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, camera, recording device, PDA, computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, MySpace, YouTube, Snapchat, Instagram, or Twitter/X, or any other way to communicate to anyone any information about this case until I accept your verdict or excuse you as a juror.

Do not even discuss the case with the other jurors until the end of the case when you retire to deliberate. It is unfair to discuss the case before all of the evidence is in, because you may become an advocate for one side or the other. The parties, the witnesses, the attorneys, and persons associated with the case are not allowed to communicate with you. And you may not speak with anyone else in or around the courthouse other than your fellow jurors or court personnel.

Do not make any independent investigation of this case. You must rely solely on what you see and hear in this courtroom. Do not try to learn anything about the case from any other source. In particular, you may not use any electronic device or

media, such as a telephone, cell phone, smartphone, or computer to research any issue touching on this case. Do not go online or read any newspaper account of this trial or listen to any radio or television newscast about it. Do not visit or view any place discussed in this case and do not use Internet programs or other devices to search for or to view any place discussed in the testimony. In sum, you may not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge, until after you have been excused as jurors.

There are some issues of law or procedure that I must decide that the attorneys and I must discuss. These issues are not part of what you must decide and they are not properly discussed in your presence. To avoid having you leave the courtroom and to save time, I may discuss these issues with the attorneys at the bench, out of your hearing. When I confer with the attorneys at the bench, please do not listen to what we are discussing. If the discussions require more time, I may have you leave the courtroom until the lawyers and I resolve the issues. I will try to keep these interruptions as few and as brief as possible.

The trial will now begin. Lawyers for each side will make an opening statement. Opening statements are intended to assist you in understanding the significance of the evidence that will be presented. The opening statements are not evidence.

After the opening statements, Plaintiffs will present their case through witness testimony and documentary or other evidence. Next, the District will have an opportunity to present its case. The Plaintiffs may then present rebuttal evidence. After all the evidence is introduced, I will instruct you on the law that applies to this case. The lawyers will then make closing arguments. Closing arguments are not evidence, but rather the attorneys' interpretations of what the evidence has shown or not shown. Finally, you will go into the jury room to deliberate to reach a verdict.

Keep an open mind during the entire trial. Do not decide the case until you have heard all of the evidence, the closing arguments, and my instructions.

It is now time for the opening statements.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Source: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, No. 1.2 (2020),
available at <http://www.lb5.uscourts.gov/juryinstructions/>]

Instruction No. 3:

First Recess

We are about to take our first break in this trial. Remember, until the trial is over, you are not to discuss this case with anyone, including your fellow jurors. If anyone approaches you and tries to talk to you about the case, advise me about it immediately. Do not read or listen to any news reports of the trial or use any technology tools to do independent research. Remember to keep an open mind until all the evidence has been received. Finally, do not speak with anyone in or around the courthouse other than your fellow jurors or court personnel.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Source: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, No. 2.1 (2020), available at <http://www.lb5.uscourts.gov/juryinstructions/>]

Plaintiffs' Proposed Instruction No. 4:

Deposition Testimony

Certain testimony [will now be] [has been] presented to you through a deposition. A deposition is the sworn, recorded answers to questions a witness was asked in advance of the trial. Under some circumstances, if a witness cannot be present to testify from the witness stand, that witness's testimony may be presented, under oath, in the form of a deposition. Some time before this trial, attorneys representing the parties in this case questioned this witness under oath.

A court reporter was present and recorded the testimony. The questions and answers [will be][have been] [read][shown] to you today. This deposition testimony is entitled to the same consideration [and is to be judged by you as to credibility] [and weighed and otherwise considered by you in the same way] as if the witness had been present and had testified from the witness stand in court.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Source: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, No. 2.13 (2020), available at <http://www.lb5.uscourts.gov/juryinstructions/>]

District's Proposed Instruction No. 5:

General Instructions

It is my duty and responsibility to instruct you on the law you are to apply in this case. The law contained in these instructions is the only law you may follow. It is your duty to follow what I instruct you the law is, regardless of any opinion that you might have as to what the law ought to be.

If I have given you the impression during the trial that I favor either party, you must disregard that impression. If I have given you the impression during the trial that I have an opinion about the facts of this case, you must disregard that impression. You are the sole judges of the facts of this case. Other than my instructions to you on the law, you should disregard anything I may have said or done during the trial in arriving at your verdict.

You should consider all of the instructions about the law as a whole and regard each instruction in light of the others, without isolating a particular statement or paragraph.

The testimony of the witnesses and other exhibits introduced by the parties constitute the evidence. The statements of counsel are not evidence; they are only arguments. It is important for you to distinguish between the arguments of counsel and the evidence on which those arguments rest. What the lawyers say or do is not evidence. You may, however, consider their arguments in light of the evidence that has been admitted and determine whether the evidence admitted in this trial supports the arguments. You must determine the facts from all the testimony that you have heard and the other evidence submitted. You are the judges of the facts, but in finding those facts, you must apply the law as I instruct you.

You are required by law to decide the case in a fair, impartial, and unbiased manner, based entirely on the law and on the evidence presented to you in the courtroom. You may not be influenced by passion, prejudice, or sympathy you might have for the Plaintiffs or the District in arriving at your verdict.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Source: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, No. 3.1 (2020),
available at <http://www.lb5.uscourts.gov/juryinstructions/>]

Instruction No. 6:

Discontinuance as to Some Parties

Certain parties are no longer involved in this trial. As jurors, it is your duty to consider the issues among the remaining parties.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Source: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, Nos. 2.5 (2020), available at <http://www.lb5.uscourts.gov/juryinstructions/>]

Instruction No. 7:

Burden of Proof

Plaintiffs have the burden of proving their case by a preponderance of the evidence. To establish by a preponderance of the evidence means to prove something is more likely so than not so. If you find that Plaintiffs have failed to prove any element of their claims by a preponderance of the evidence, then they may not recover on that claim.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Source: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, No. 3.2 (2020),
available at <http://www.lb5.uscourts.gov/juryinstructions/>]

District's Proposed Instruction No. 8:

Evidence

The evidence you are to consider consists of the testimony of the witnesses, the documents and other exhibits admitted into evidence, and any fair inferences and reasonable conclusions you can draw from the facts and circumstances that have been proven.

Generally speaking, there are two types of evidence. One is direct evidence, such as testimony of an eyewitness. The other is indirect or circumstantial evidence. Circumstantial evidence is evidence that proves a fact from which you can logically conclude another fact exists. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that you find the facts from a preponderance of all the evidence, both direct and circumstantial.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Source: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, Nos. 3.3 (2020), available at <http://www.lb5.uscourts.gov/juryinstructions/>]

Plaintiffs’ Proposed Instruction No. 9:

Stipulated Testimony

A “stipulation” is something that the attorneys agree is accurate. When there is no dispute about certain testimony, the attorneys may agree or “stipulate” to that testimony. Stipulated testimony must be considered in the same way as if that testimony had been received here in court.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Source: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, Nos. 2.2 (2020),
available at <http://www.lb5.uscourts.gov/juryinstructions/>]

Instruction No. 10:

Stipulation of Fact

A “stipulation” is an agreement. When there is no dispute about certain facts, the attorneys may agree or “stipulate” to those facts. You must accept a stipulated fact as evidence and treat that fact as having been proven here in court.

The Parties have agreed to stipulate to the following facts:

[INSERT]

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Source: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, Nos. 2.3 (2020),
available at <http://www.lb5.uscourts.gov/juryinstructions/>]

Plaintiffs' Proposed Instruction No. 11:

Judicial Notice

You must accept as proved facts of which the court takes judicial notice. The court has taken judicial notice that [state the facts].

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Source: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, Nos. 2.4 (2020),
available at <http://www.lb5.uscourts.gov/juryinstructions/>]

Plaintiffs' Proposed Instruction No. 12:

Limiting Instruction

When testimony or an exhibit is admitted for a limited purpose, you may consider that testimony or exhibit only for the specific limited purpose for which it was admitted.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Source: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, Nos. 2.6 (2020), available at <http://www.lb5.uscourts.gov/juryinstructions/>]

Instruction No. 13:
Charts and Summaries

Certain charts and summaries have been shown to you solely to help explain or summarize the facts disclosed by the books, records, and other documents that are in evidence. These charts and summaries are not evidence or proof of any facts. You should determine the facts from the evidence.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Source: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, Nos. 2.7 (2020), available at <http://www.lb5.uscourts.gov/juryinstructions/>]

Instruction No. 14:

Demonstrative Evidence

Exhibit [specify] is an illustration. It is a party's [description/picture/model] used to describe something involved in this trial. If your recollection of the evidence differs from the exhibit, rely on your recollection.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Source: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, Nos. 2.8 (2020),
available at <http://www.lb5.uscourts.gov/juryinstructions/>]

Instruction No. 15:

Witnesses

You alone are to determine the questions of credibility or truthfulness of the witnesses. In weighing the testimony of the witnesses, you may consider the witness's manner and demeanor on the witness stand, any feelings or interest in the case, or any prejudice or bias about the case, that he or she may have, and the consistency or inconsistency of his or her testimony considered in the light of the circumstances. Has the witness been contradicted by other credible evidence? Has he or she made statements at other times and places contrary to those made here on the witness stand? You must give the testimony of each witness the credibility that you think it deserves.

Even though a witness may be a party to the action and therefore interested in its outcome, the testimony may be accepted if it is not contradicted by direct evidence or by any inference that may be drawn from the evidence, if you believe the testimony.

You are not to decide this case by counting the number of witnesses who have testified on the opposing sides. Witness testimony is weighed; witnesses are not counted. The test is not the relative number of witnesses, but the relative convincing force of the evidence. The testimony of a single witness is sufficient to prove any fact, even if a greater number of witnesses testified to the contrary, if after considering all of the other evidence, you believe that witness.

GIVEN _____

GIVEN AS MODIFIED _____

REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Source: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, No. 3.4 (2020), available at <http://www.lb5.uscourts.gov/juryinstructions/>]

Instruction No. 16:

Impeachment by Witness's Inconsistent Statements

In determining the weight to give to the testimony of a witness, consider whether there was evidence that at some other time the witness said or did something, or failed to say or do something, that was different from the testimony given at the trial.

A simple mistake by a witness does not necessarily mean that the witness did not tell the truth as he or she remembers it. People may forget some things or remember other things inaccurately. If a witness made a misstatement, consider whether that misstatement was an intentional falsehood or simply an innocent mistake. The significance of that may depend on whether it has to do with an important fact or with only an unimportant detail.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Source: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, No. 2.11 (2020), available at <http://www.lb5.uscourts.gov/juryinstructions/>]

Plaintiffs' Proposed Instruction No. 17:

Expert Witnesses

When knowledge of technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field is permitted to state his or her opinion on those technical matters. However, you are not required to accept that opinion. As with any other witness, it is up to you to decide whether to rely on it.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Source: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, No. 3.5 (2020),
available at <http://www.lb5.uscourts.gov/juryinstructions/>]

District's Proposed Instruction No. 18:

No Inference from Filing Suit

The fact that Plaintiffs brought a lawsuit and are in court seeking damages creates no inference that they are entitled to a judgment against the District. Anyone may make a claim and file a lawsuit. The act of making a claim in a lawsuit, by itself, does not in any way tend to establish that claim and is not evidence.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Source: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, No. 3.6 (2020),
available at <http://www.lb5.uscourts.gov/juryinstructions/>]

District's Proposed Instruction No. 19:

Bias—Government Entity or Agency Involved

Do not let bias, prejudice or sympathy play any part in your deliberations. A governmental entity or agency, like the District, and all other persons are equal before the law and must be treated as equals in a court of justice.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Source: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, No. 2.16 (2020), available at <http://www.lb5.uscourts.gov/juryinstructions/>]

District's Proposed Instruction No. 20:

42 U.S.C. Section 1983 – Municipal Liability

Plaintiffs claim that the District violated the Fourteenth Amendment to the U.S. Constitution's Equal Protection Clause, which prohibits intentional race discrimination.

To prevail on their claim against the District, Plaintiffs must prove by a preponderance of the evidence that:

1. an official policy or custom existed of race discrimination;
2. a policymaker for the District knew or should have known about the policy or custom;
3. the policymaker was deliberately indifferent to the risk of constitutional violations; and
4. the policy or custom was the moving force leading to the constitutional violation.

You are instructed that the District's Board of Trustees is the District's final policymaker for the purpose of analyzing municipal liability.

A "policy" can be a policy statement, ordinance, regulation, or decision officially adopted and promulgated by the District's Board of Trustees.

A "custom" is a prior pattern of persistent, widespread practice of District officials or employees that, although not formally adopted, is so common and well-settled that it fairly represents District policy. But to show that a custom exists, Plaintiffs must prove that either the District's Board of Trustees knew or should have known about the custom.

A prior pattern requires similarity and specificity. Prior indications cannot simply be for any and all bad or unwise acts, but rather must point to the specific

violation in question. Further, a pattern requires sufficiently numerous prior incidents, as opposed to isolated instances.

For a District official to act with deliberate indifference, the District official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists or a violation of constitutional rights exists, and they must also draw the inference. Deliberate indifference is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action. Actions and decisions by officials that are merely inept, erroneous, ineffective, or negligent do not amount to deliberate indifference. Further, school officials do not have a duty to prevent further harm to a student.

The deliberate indifference standard is a high one. It is more than “negligence” or “gross negligence” and amounts to a lesser form of intent.

“Negligence” means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

“Ordinary care” means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

“Gross negligence” means an act or omission by the District’s Board of Trustees:

- a) which viewed objectively from the standpoint of the Board of Trustees, at the time of its occurrence, involves an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiffs; and
- b) of which the Board of Trustees had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiffs.

To act with deliberate indifference, the District’s Board of Trustees must have known of the intentional race discrimination Plaintiffs complain of and intended that

it occur or continue. Actions and decisions by the Board of Trustees that were merely inept, ineffective, negligent, or grossly negligent do not amount to deliberate indifference. The Board of Trustees could have misread the situation and made a tragic error in judgment, but this would still not reach the level of deliberate indifference. Deliberate indifference means that the response, or lack of response, by the Board of Trustees was clearly unreasonable in light of the known circumstances. Even if the investigative and disciplinary response by the Board of Trustees could have been better, mere unreasonableness is not enough to support deliberate indifference. The Board of Trustees was not required to end the violations entirely.

If you find that the actions of the District's Board of Trustees, if any, were reasonable, or merely negligent or grossly negligent, you must find for the District.

"Moving force" means that the action taken by the District's Board of Trustees was the direct cause of Plaintiffs alleged constitutional injury. An after-the-fact action cannot be the direct cause of something that has already happened.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE _____ HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Source: *U.S. Fifth Circuit Pattern Jury Instructions*—Civil, Nos. 10.1, 10.5 (2020), available at <http://www.lb5.uscourts.gov/juryinstructions/>; *Bd. of Cnty. Comm'rs of Bryan Cnty. v. Brown*, 520 U.S. 397, 403-04 (1997); *Eugene v. Alief Indep. Sch. Dist.*, 65 F.3d 1299, 1304 (5th Cir. 1995); *Jett v. Dallas Indep. Sch. Dist.*, 798 F.2d 748, 759 (5th Cir. 1986); *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443, 454, 458 (5th Cir. 1994) (en banc) (deliberate indifference is a lesser form of intent while gross negligence is a higher level of negligence and cannot hold district liable under theory of respondeat superior); *Hagan v. Houston Indep. Sch. Dist.*, 51 F.3d 48 (5th Cir. 1995); *Estate of Davis*, 406 F.3d at 381 (quoting *Brown*, 520 U.S. at 410); *Alton v.*

Tex. A&M Univ., 168 F.3d 196, 201 (5th Cir. 1999); *Alton v. Tex. A&M Univ.*, 168 F.3d 196, 201 (5th Cir. 1999); *Valle v. City of Houston*, 613 F.3d 536, 542 (5th Cir. 2010); *Wyatt v. Kilgore*, 2011 WL 6016467, at *9 n.4 (E.D. Tex. Nov. 30, 2011), *rev'd in part on other grounds*, 718 F.3d 496 (5th Cir. 2013); *Doe v. Leander Indep. Sch. Dist.*, 2020 WL 13833132, at *9 (W.D. Tex. Dec. 22, 2020), *adopted by* 2021 WL 11670039 (W.D. Tex. Jan. 8, 2021)]

Plaintiffs' Proposed Instruction No. 21: Civil Actions Under 42 U.S.C. §

1983 ¹

The law to be applied in this case is the federal civil rights law, which provides a remedy for individuals who have been deprived of their constitutional rights under color of state law.

Section 1983 of Title 42 of the United States Code states:

Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Section 1983 creates a form of liability in favor of persons who have been deprived of rights, privileges and immunities secured to them by the United States Constitution and federal statutes. Before section 1983 was enacted in 1871, people so injured were not able to sue state officials or persons acting under color of state law for money damages in federal court. In enacting this statute, Congress intended to create a remedy as broad as the protection provided by the Fourteenth Amendment and federal laws. Section 1983 was enacted to give people a federal remedy enforceable in federal court because it was feared that adequate protection of federal rights might not be available in state courts.

Burden of Proof under Section 1983 ²

I shall shortly instruct you on the elements of plaintiff's section 1983 claim and on the elements of defendants' qualified immunity defense.

¹ Matthew Bender, Modern Federal Jury Instructions, Forms 87-65,87-66. (citing *United States Supreme Court: Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 102 S. Ct. 2744, 73 L. Ed. 2d 482 (1982); *Imbler v. Pachtman*, 424 U.S. 409, 96 S. Ct. 984, 47 L. Ed. 2d 128 (1976); *Mitchum v. Foster*, 407 U.S. 225, 92 S. Ct. 2151, 32 L. Ed. 2d 705 (1972); *Monroe v. Pape*, 365 U.S. 167, 81 S. Ct. 473, 5 L. Ed. 2d 492 (1961)).

² Matthew Bender, Modern Federal Jury Instructions, Form 87-67 (citing *Gomez v. Toledo*, 446 U.S. 635, 100 S. Ct. 1920, 64 L. Ed. 2d 572 (1980)).

The plaintiff has the burden of proving each and every element of his section 1983 claim by a preponderance of the evidence. If you find that any one of the elements of plaintiff's section 1983 claim has not been proven by a preponderance of the evidence, you must return a verdict for the defendants.

The defendants have the burden of proving each element of their affirmative defenses. I shall shortly instruct you on the elements of their defenses. If you find that any one of the elements of either of defendants' defenses has not been proven by a preponderance of the evidence, you must disregard the defense.

Preponderance of the Evidence ³

To "establish by the preponderance of the evidence" means to prove that something is more likely so than it is not so. In other words, a preponderance of the evidence in the case means such evidence as, when considered and compared to that opposed to it, has more convincing force, and produces in your mind a belief that what is sought to be proved is more likely true than not true.

In determining whether any fact in issue has been proved by a preponderance of the evidence in the case, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

Elements of a Section 1983 Claim ⁴

To establish a claim under section 1983, plaintiff must establish, by a preponderance of the evidence, each of the following three elements:

- (1) that the conduct complained of was committed by a person acting under color of state law;

³ Federal Jury Practice and Instructions (5th ed. 2001) § 166.51.

⁴ Matthew Bender, Modern Federal Jury Instructions, Form 87-68 (citing United States Supreme Court: *Parratt v. Taylor*, 451 U.S. 527, 101 S. Ct. 1908, 68 L. Ed. 2d 420 (1981); *Eagleston v. Guido*, 41 F.3d 865 (2nd Cir. 1994)).

- (2) that this conduct deprived the plaintiff of rights, privileges or immunities secured by the Constitution or laws of the United States; and
- (3) that the defendant's acts were the proximate cause of the injuries and consequent damages sustained by the plaintiff.

District's Proposed Instruction No. 22:

Section 1983 – Intentional Race Discrimination

Plaintiffs claim the District violated their constitutional right to be free from intentional race discrimination under the Fourteenth Amendment. Plaintiffs claim that the District selectively enforced its dress and grooming code against them due to their race, Black. The District disagrees and contends that it enforced the dress code in a uniform manner. The District further contends that the Board of Trustees did not have actual or constructive knowledge of the alleged constitutional violations before they occurred; there was no persistent, widespread pattern or practice of unconstitutional behavior by District officials or employees; and the Board of Trustees did not act with deliberate indifference to any known violations of the Plaintiffs' constitutional rights.

You are instructed that the District's Fall 2019 dress code is facially race neutral and can be enforced in a non-discriminatory manner.

As such, Plaintiffs must prove by a preponderance of the evidence that:

1. the District's Board of Trustees had actual or constructive knowledge that District officials or employees selectively enforced the dress code against Plaintiffs because of their race;
2. the District's Board of Trustees had actual or constructive knowledge of a persistent and widespread pattern of District officials or employees selectively enforcing the dress code against Black students because of their race that was so common and well settled as to constitute a custom that fairly represented District policy; and
3. the District's Board of Trustees acted with deliberate indifference towards Plaintiffs' constitutional right to be free from disparate treatment on the basis of their race.

If Plaintiffs fail to prove any of the above by a preponderance of the evidence, they have failed to prove their claim for intentional race discrimination under Section 1983, and you must find for the District.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Sources: *U.S. Fifth Circuit Pattern Jury Instructions*—Civil, No. 1.1 (2020), available at <http://www.lb5.uscourts.gov/juryinstructions/>; *Burge v. St. Tammany Parish*, 336 F.3d 363, 370 (5th Cir. 2003); *Estate of Davis v. City of North Richland Hills*, 406 F.3d 375, 382-85 (5th Cir. 2005); *Valle v. City of Houston*, 613 F.3d 536, 548 (5th Cir. 2010); *Peterson v. City of Fort Worth, Tex.*, 588 F.3d 838, 850 (5th Cir. 2009); *Connick v. Thompson*, 563 U.S. 51, 62-63 (2011); *Alton v. Tex. A&M Univ.*, 168 F.3d 196, 201 (5th Cir. 1999)]

District's Proposed Instruction No. 23:

Title VI – Intentional Race Discrimination

Plaintiffs claim that District officials discriminated against them on the basis of their race by selectively enforcing the dress code against them because they are Black.

The District denies that it selectively enforced its dress code. The District contends that it applied its facially race-neutral dress code to all students. The District further contends that the reason Plaintiffs were sent to the Redirect Room was because their guardians purposefully sent them to school out of dress code. Further, the District asserts it provided Plaintiffs' guardians the opportunity to come to school and fix Plaintiffs' hair so that they complied with the dress code, and, therefore, did not need to be sent to the Redirect Room, but they refused to do so.

Title VI provides that: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. 42 U.S.C. § 2000d.

To succeed on their claims against the District, Plaintiffs must prove by a preponderance of the evidence that the District:

1. is a recipient of federal funds; and
2. engaged in intentional discrimination by selectively enforcing its dress code against Plaintiffs because of their race.

You are instructed that, as a public school district, the District is a recipient of federal funds.

If Plaintiffs fail to prove the remaining element above by a preponderance of the evidence, they have failed to prove their claim for intentional race discrimination under Title VI, and you must find for the District.

GIVEN_____ GIVEN AS MODIFIED_____ REFUSED_____

DATE HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Sources: 42 U.S.C. § 2000d; *Rollerson v. Brazos River Harbor Navigation Dist.*, 6 F.4th 633, 639 (5th Cir. 2021); *Fennell v. Marion Indep. Sch. Dist.*, 804 F.3d 398 (5th Cir. 2015); *Rodgers v. Smith*, 842 F. App'x 929 (5th Cir. 2021); *Jones v. City of Detroit*, 20 F.4th 1117, 1121 (6th Cir. 2021) (collecting cases)]

Plaintiffs' Proposed Instruction No. 24: Title VI of the federal Civil Rights Act of 1964 (42 U.S.C. Sec. 1981, et seq.),

This case involves civil rights claims under the Civil Rights Act of 1866, 42 U.S.C. § 1981, which prohibits race discrimination in the making and enforcing of contracts. It also alleges violations of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., prohibiting race discrimination in programs receiving federal financial assistance, and also 42 U.S.C. § 1983.

District's Proposed Instruction No. 25:

Consider Damages Only if Necessary

If Plaintiffs have proven all elements of their claims under Section 1983 and/or Title VI by a preponderance of the evidence, you must determine the damages to which they are entitled. You should not interpret the fact that I am giving instructions about Plaintiffs' damages as an indication in any way that I believe that Plaintiffs should, or should not, win this case. It is your task to decide whether the District is liable. I am instructing you on damages only so that you will have guidance in the event you decide that the District is liable and that Plaintiffs are entitled to recover money from the District.

GIVEN_____ GIVEN AS MODIFIED_____ REFUSED_____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Source: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, No. 15.1 (2020), available at <http://www.lb5.uscourts.gov/juryinstructions/>]

District's Proposed Instruction No. 26:

Compensatory Damages

If you find that the Plaintiffs proved by a preponderance of the evidence that the District violated their constitutional rights under Section 1983 for intentional race discrimination, then you must determine an amount that is fair compensation for Plaintiffs' damages. These damages are called compensatory damages. The purpose of compensatory damages is to make Plaintiffs whole – that is, to compensate Plaintiffs for the damage they suffered. Compensatory damages are not limited to expenses that Plaintiffs may have incurred because of their injury. If Plaintiffs win under their Section 1983 claims, they are entitled to compensatory damages for the physical injury, pain and suffering, and mental anguish that they have suffered because of the District's wrongful conduct.

You may award compensatory damages only for injuries that Plaintiffs prove were proximately caused by the District's allegedly wrongful conduct. The damages that you award must be fair compensation for all of Plaintiffs' damages, no more and no less. Damages are not allowed as a punishment and cannot be imposed or increased to penalize the District. You should not award compensatory damages for speculative injuries, but only for those injuries that Plaintiffs have actually suffered or that Plaintiffs are reasonably likely to suffer in the future.

If you decide to award compensatory damages, you should be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require that Plaintiffs prove the amount of their losses with mathematical precision, but only with as much definitiveness and accuracy as the circumstances permit.

You must use sound discretion in fixing an award of damages, drawing reasonable inferences where you find them appropriate from the facts and circumstances in evidence.

You are instructed that Plaintiffs cannot recover compensatory damages for any violations of Title VI.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Sources: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, No. 15.2 (2020), available at <http://www.lb5.uscourts.gov/juryinstructions/>; *Cummings v. Premier Rehab Keller, PPLC*, 142 S.Ct. 1562, 1569-76 (2022)]

Plaintiffs' Proposed Instruction No. 27: Compensatory Damages ⁵

Just because I am instructing you on how to award damages does not mean that I have any opinion on whether or not the defendant should be held liable. If you return a verdict for the plaintiff, then you must consider the issue of actual damages.

If you return a verdict for the plaintiff, then you must award him such sum of money as you believe will fairly and justly compensate him for any injury you believe he actually sustained as a direct consequence of the conduct of the defendants.

You shall award actual damages for only those injuries which you find that plaintiff has proven by a preponderance of the evidence. Moreover, you shall award actual damages for only those injuries which you find plaintiff has proven by a preponderance of evidence to have been the direct result of conduct by the defendants in violation of section 1983. That is, you may not simply award actual damages for any injury suffered by plaintiff—you must award actual damages only for those injuries that are a direct result of a defendant's actions and that are a direct result of any of the defendant's conduct that violated plaintiff's federal rights under color of law.

Actual damages must not be based on speculation or sympathy. They must be based on the evidence presented at trial, and only on that evidence.

⁵ Matthew Bender, Modern Federal Jury Instructions, Form 87-87 (citing *Memphis Community School Dist. v. Stachura*, 477 U.S. 299, 106 S. Ct. 2537, 91 L. Ed. 249 (1986); *Smith v. Wade*, 461 U.S. 20, 103 S. Ct. 1625, 75 L. Ed. 2d 632 (1983); *Carey v. Piphus*, 435 U.S. 247, 98 S. Ct. 1042, 55 L. Ed. 2d 252 (1978)).

District's Proposed Instruction No. 28:

Mitigation of Damages

A person who claims damages resulting from the wrongful act of another has a duty under the law to use reasonable diligence to mitigate his damages, that is, to avoid or to minimize those damages.

If you find the District is liable and Plaintiffs have suffered damages, Plaintiffs may not recover for any item of damage which they could have avoided through reasonable effort. If you find that the District proved by a preponderance of the evidence Plaintiffs unreasonably failed to take advantage of an opportunity to lessen their damages, you should deny them recovery for those damages that they would have avoided had they taken advantage of the opportunity.

You are the sole judge of whether Plaintiffs acted reasonably in avoiding or minimizing their damages. An injured plaintiff may not sit idly by when presented with an opportunity to reduce his damages. However, he is not required to exercise unreasonable efforts or incur unreasonable expenses in mitigating the damages. The District has the burden of proving the damages that Plaintiffs could have mitigated. In deciding whether to reduce Plaintiffs' damages because of their failure to mitigate, you must weigh all the evidence in light of the particular circumstances of the case, using sound discretion in deciding whether the District has satisfied his burden of proving that Plaintiffs' conduct was not reasonable.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Sources: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, No. 15.5 (2020), available at <http://www.lb5.uscourts.gov/juryinstructions/>]

District's Proposed Instruction No. 29:

Nominal Damages for Constitutional Claims

If you return a verdict for the Plaintiffs for their constitutional claims but find that Plaintiffs have failed to prove by a preponderance of the evidence that they suffered any actual damages, then you must return an award of damages in some nominal or token amount, not to exceed the sum of One Dollar (\$1.00).

Nominal damages are an inconsequential or trifling sum awarded to a plaintiff when a technical violation of his rights has occurred but the plaintiff has suffered no actual loss or injury.

If you find from a preponderance of the evidence that Plaintiffs have sustained a technical violation of their constitutional rights under Section 1983 for intentional race discrimination, but that Plaintiffs suffered no actual loss as a result of this violation, then you may award Plaintiffs nominal damages.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Sources: Matthew Bender, Modern Federal Jury Instructions, Form 87-88 (citing *Carey v. Phipps*, 435 U.S. 247, 98 S. Ct. 1042, 55 L. Ed. 252 (1978); *Amato v. City of Saratoga Springs*, 170 F.3d 311 (2d Cir. 1999) among other cases)); *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, No. 15.6 (2020), available at <http://www.lb5.uscourts.gov/juryinstructions/>]

Plaintiffs' Proposed Instruction No. 30: Damages for the Mere Fact of Violation ⁶

If you return a verdict for the plaintiffs, but find that plaintiff has failed to prove by a preponderance of the evidence that he suffered any actual damages, then you must return an award of damages in some nominal or token amount, not to exceed the sum of One Dollar (\$1.00).

Nominal damages must be awarded when the plaintiff has been deprived by defendants of a constitutional right but has suffered no actual damage as a natural consequence of that deprivation. The mere fact that a constitutional deprivation occurred is an injury to the person entitled to enjoy that right, even when no actual damages flow from the deprivation. Therefore, if you find that plaintiff has suffered no injury as a result of defendants' conduct, other than the fact of a constitutional deprivation, you must award nominal damages, not to exceed One Dollar.

⁶ Matthew Bender, Modern Federal Jury Instructions, Form 87-88 (citing *Carey v. Piphus*, 435 U.S. 247, 98 S. Ct. 1042, 55 L. Ed. 252 (1978); *Amato v. City of Saratoga Springs*, 170 F.3d 311 (2d Cir. 1999) among other cases)).

Instruction No. 31:

Duty to Deliberate; Notes

It is now your duty to deliberate and to consult with one another in an effort to reach a verdict. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to re-examine your own opinions and change your mind if you are convinced that you were wrong. But do not give up on your honest beliefs because the other jurors think differently, or just to finish the case.

Remember at all times, you are the judges of the facts. You have been allowed to take notes during this trial. Any notes that you took during this trial are only aids to memory. If your memory differs from your notes, you should rely on your memory and not on the notes. The notes are not evidence. If you did not take notes, rely on your independent recollection of the evidence and do not be unduly influenced by the notes of other jurors. Notes are not entitled to greater weight than the recollection or impression of each juror about the testimony.

When you go into the jury room to deliberate, you may take with you a copy of this charge, the exhibits that I have admitted into evidence, and your notes. You must select a jury foreperson to guide you in your deliberations and to speak for you here in the courtroom.

Your verdict must be unanimous. After you have reached a unanimous verdict, your jury foreperson must fill out the answers to the written questions on the verdict form and sign and date it. After you have concluded your service and I have discharged the jury, you are not required to talk with anyone about the case.

If you need to communicate with me during your deliberations, the jury foreperson should write the inquiry and give it to the court security officer. After consulting with the attorneys, I will respond either in writing or by meeting with you in the courtroom. Keep in mind, however, that you must never disclose to anyone, not even to me, your numerical division on any question.

You may now proceed to the jury room to begin your deliberations.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Sources: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, No. 3.7 (2020),
available at <http://www.lb5.uscourts.gov/juryinstructions/>]

Plaintiffs' Proposed Question No. 1:

TISD Maintenance Of A Racially Discrimination Policy – M.T.

Has M.T. proven by a preponderance of the evidence that the District's Board of Trustees ratified, condoned, or maintained a racially discriminatory grooming policy?

Answer "Yes" or "No."

Answer: _____

If your Answer is "Yes," proceed to Question No. 2. If your Answer is "No," proceed to Question No. 3.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

Plaintiffs' Proposed Question No. 2:

TISD Liability For Maintenance Of A Racially Discrimination Policy – M.T.

Has M.T. proven by a preponderance of the evidence that the District's Board of Trustees ratified and/or condoned, disciplinary actions that interfered with his ability to obtain an education at TISD because M.T. was found to violate TISD's racially discriminatory grooming policy.

Answer "Yes" or "No."

Answer: _____

Please proceed to Question No. 3.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

Plaintiffs' Proposed Question No. 3:

TISD Maintenance Of A Racially Discrimination Policy – K.C.

Has K.C. proven by a preponderance of the evidence that the District's Board of Trustees ratified, condoned, or maintained a racially discriminatory grooming policy?

Answer "Yes" or "No."

Answer: _____

If your Answer is "Yes," proceed to Question No. 4. If your Answer is "No," proceed to Instruction No. 5.

GIVEN _____

GIVEN AS MODIFIED _____

REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

Plaintiffs' Proposed Question No. 4:

TISD Liability For Maintenance Of A Racially Discrimination Policy – K.C.

Has K.C. proven by a preponderance of the evidence that the District's Board of Trustees ratified and/or condoned, disciplinary actions that interfered with his ability to obtain an education at TISD because M.T. was found to violate TISD's racially discriminatory grooming policy.

Answer "Yes" or "No."

Answer: _____

Please proceed Question No. 5.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

Plaintiffs' Proposed Question No. 5:
(If you answered yes to Question Nos. 1-2 please Answer below.)

What sum of money, would fairly and reasonably compensate M.T. for his economic and noneconomic damages, if any, you have found the District caused him due to violation of his constitutional rights.

\$ _____

Proceed to Question No. 6.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Sources: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, No. 15.5 (2020), available at <http://www.lb5.uscourts.gov/juryinstructions/>]

Plaintiffs' Proposed Question No. 6:
(If you answered yes to Question Nos. 3-4 please Answer below.)

What sum of money, would fairly and reasonably compensate K.C. for his economic and noneconomic damages, if any, you have found the District caused him due to violation of his constitutional rights.

\$ _____

GIVEN _____

GIVEN AS MODIFIED _____

REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Sources: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, No. 15.5 (2020), available at <http://www.lb5.uscourts.gov/juryinstructions/>]

District's Proposed Question No. 1:

Municipal Liability for Intentional Race Discrimination – M.T.

Has M.T. proven by a preponderance of the evidence that the District's Board of Trustees had actual or constructive knowledge that he was sent to the Redirect Room for violating the District's dress and grooming code because of his race prior to M.T. being administratively withdrawn?

Answer "Yes" or "No."

Answer: _____

If your Answer is "Yes," proceed to Question No. 2. If your Answer is "No," proceed to Question No. 4.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

District's Proposed Question No. 2:

Municipal Liability for Intentional Race Discrimination – M.T.

Has M.T. proven by a preponderance of the evidence that the District's Board of Trustees had actual or constructive knowledge of a persistent, widespread practice of District officials or employees selectively enforcing the dress code against Black students because of their race that was so common and well settled as to constitute a custom that fairly represented District policy?

Answer "Yes" or "No."

Answer: _____

If your Answer is "Yes," proceed to Question No. 3. If your Answer is "No," proceed to Question No. 4.

GIVEN _____

GIVEN AS MODIFIED _____

REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

District's Proposed Question No. 3:

Municipal Liability for Intentional Race Discrimination – M.T.

Has M.T. proven by a preponderance of the evidence that the District's Board of Trustees acted with deliberate indifference towards M.T. being sent to the Redirect Room because of his race?

Answer "Yes" or "No."

Answer: _____

Regardless of your Answer proceed to Question No. 4.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

District's Proposed Question No. 4:

Municipal Liability for Intentional Race Discrimination – K.C.

Has K.C. proven by a preponderance of the evidence that the District's Board of Trustees had actual or constructive knowledge that he was sent to the Redirect Room for violating the District's dress and grooming code because of his race, prior to K.C. being administratively withdrawn?

Answer "Yes" or "No."

Answer: _____

If your Answer is "Yes," proceed to Question No. 5. If your Answer is "No," proceed to Question No. 7.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

District's Proposed Question No. 5:

Municipal Liability for Intentional Race Discrimination – K.C.

Has K.C. proven by a preponderance of the evidence that the District's Board of Trustees had actual or constructive knowledge of a persistent, widespread practice of District officials or employees selectively enforcing the dress code against Black students because of their race that was so common and well settled as to constitute a custom that fairly represented District policy?

Answer "Yes" or "No."

Answer: _____

If your Answer is "Yes," proceed to Question No. 6. If your Answer is "No," proceed to Question No. 7.

GIVEN _____

GIVEN AS MODIFIED _____

REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

District's Proposed Question No. 6:

Municipal Liability for Intentional Race Discrimination – K.C.

Has K.C. proven by a preponderance of the evidence that the District's Board of Trustees acted with deliberate indifference towards K.C. being sent to the Redirect Room because of his race?

Answer "Yes" or "No."

Answer: _____

Regardless of your Answer proceed to Question No. 7.

GIVEN _____

GIVEN AS MODIFIED _____

REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

District's Proposed Question No. 7:

Title VI – Intentional Race Discrimination – M.T.

Has M.T. proven by a preponderance of the evidence that Principal Tamara Fite sent him to the Redirect Room because of his race and not because he was out of dress code?

Answer “Yes” or “No.”

Answer: _____

Regardless of your Answer proceed to Question No. 8.

GIVEN _____

GIVEN AS MODIFIED _____

REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

District's Proposed Question No. 8

Title VI – Intentional Race Discrimination – K.C.

Has K.C. proven by a preponderance of the evidence that Principal Tamara Fite sent him to the Redirect Room because of his race and not because he was out of dress code?

Answer “Yes” or “No.”

Answer: _____

Regardless of your Answer proceed to Question No. 9.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

District's Proposed Question No. 9:

Damages for Municipal Liability for Intentional Race Discrimination – M.T.

Only answer the following Questions if you Answered “Yes” to Questions 1-3 above. If you Answered “No” to any of Questions 1-3 then proceed to Question No. 10.

What sum of money, if any and if paid now in cash, would fairly and reasonably compensate M.T. for his actual damages, if any, you have found the District caused him due to discriminating against him based on his race?

\$ _____

What sum of money, if any and if paid now in cash, would fairly and reasonably compensate M.T. for his compensatory damages, if any, you have found the District caused him due to discriminating against him based on his race?

\$ _____

Proceed to Question No. 10.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Sources: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, No. 15.5 (2020), available at <http://www.lb5.uscourts.gov/juryinstructions/>]

District's Proposed Question No. 10:

Damages for Municipal Liability for Intentional Race Discrimination – K.C.

Only answer the following Questions if you Answered “Yes” to Questions 4-6 above. If you Answered “No” to any of Questions 4-6 then do not fill out the below.

What sum of money, if any and if paid now in cash, would fairly and reasonably compensate K.C. for his actual damages, if any, you have found the District caused him due to discriminating against him based on his race?

\$ _____

What sum of money, if any and if paid now in cash, would fairly and reasonably compensate K.C. for his compensatory damages, if any, you have found the District caused him due to discriminating against him based on his race?

\$ _____

You are now finished with the verdict forms. Please inform the Bailiff.

GIVEN _____ GIVEN AS MODIFIED _____ REFUSED _____

DATE

HONORABLE ROBERT W. SCHROEDER III
U.S. DISTRICT JUDGE PRESIDING

[Sources: *U.S. Fifth Circuit Pattern Jury Instructions—Civil*, No. 15.5 (2020), available at <http://www.lb5.uscourts.gov/juryinstructions/>]

Respectfully submitted,

LAW OFFICE OF BRADLEY ROGERS, MORRIS, & GROVER, L.L.P.
STEELE

/s/ Waukeen McCoy

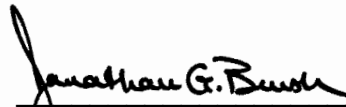
By Permission – Amy Demmler

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ATTORNEYS FOR PLAINTIFFS



JONATHAN G. BRUSH

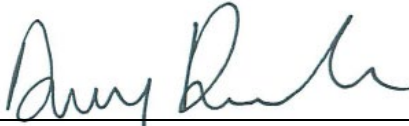
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ATTORNEYS FOR TATUM ISD

CERTIFICATE OF CONFERENCE

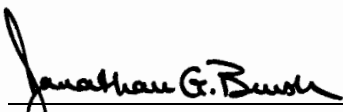
Pursuant to the Court's Order (Dkt. 128), I hereby certify that on January 22 and 26, 2024, the Parties conferred via email correspondence regarding the above Amended Joint Jury Instructions. The Parties are in agreement with the contentions set forth above.



Attorney for Tatum ISD

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2024, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send electronic notification of such filing to all counsel of record.



Attorney for Tatum ISD